HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 21644 of 1999

Between:
Basireddy Mal Reddy s/o B. Reddanna

..... PETITIONER

AND

1 The A.P. Co-operative Tribunal, Hyderabad, rep. By its Secretary and two others

.....RESPONDENTS

O R D E R:

This writ petition is filed being aggrieved by the order dated 12.11.1998 made in I.A.No.62 of 1998 in C.T.A. SR. No.237 of 1998 on the file of the A.P. Co-Operative Tribunal, Hyderabad, (for short 'Tribunal') wherein the application filed under Section 5 of the Limitation Act, seeking to condone the delay of 978 days in filing the appeal against the order in Proceedings Rc.No.1411/93G dated 30-05-1994 passed by the Deputy Registrar of Co-operative Societies, Kadapa, under Section 60(1) of A.P.Co-operative Societies Act 7 of 1994 (for short 'the Act'), calling upon the petitioner to pay an amount of Rs.67,451.30 paise, was dismissed.

It seems that the petitioner was the President of the 3rd respondent-Society during the relevant period. The only allegation against the petitioner is that though there was heavy cash balance of Rs.51,580.64 ps., he had not taken any action on the paid Secretary.

It is the case of the respondent-Society that its Secretary was irresponsible and irregular in his duties and

in keeping the account books and other records. In fact, he was keeping the records at his house at Rayachoty and not keeping them in the office of the Society and was evading to produce the same. Its further case is that there was negligence on the part of the petitioner-President in not handing over the paid Secretary to the Police concerned at the appropriate time and that the said amount was misappropriated by the paid Secretary. In view of this, as per the Inspection Report, under Section 52 of the Act, a show cause notice under Section 60(1) of the Act was issued to the petitioner. Thereafter, final proceedings passed on 11-07-1994 holding as under:

> "....In this office reference 3rd above a show cause Notice under Section 60(1) of the A.P.C.S.Act 7 of 1964 was issued to Sr.B.mal Reddy, Nooliveedu P.A.C.S. in Galiveedu Mandal (which was duly acknowledged by him on 12.4.1994) to show cause within 15 days from the date of receipt of the Notice as to why the above mentioned amounts should not be recovered from him with interest by passing an order under Section 60(1) of the A.P.C.S.Act 7 of 1964 upto the date of realization as recommended by the Inspecting Officer as he was held responsible for the misappropriation of the above amounts. But Sri B.Mal Reddy, President, Nooliveedu P.A.C.S. Nooliveedu (Galiveedu Mandal) acknowledged the show cause notice on 12-4-1994 but failed to file any objection representation in this regard.
>
> Therefore, I, P.Ranganatham Deputy Registrar of Co-operative Societies, Cuddpah by virtue of powers vested in me under Section 60(1) of the A.P.C.S.Act 7 of 1964 hereby Nooliveedu (Galiveedu Mandal) to remit the amount of

> Rs.65,094.39 to the assets of the society together with interest at 18% from the dates noted against each item."

Aggrieved by the same, the petitioner preferred an appeal in C.T.A. SR. No. 237 of 1998 before the Tribunal. He also filed I.A.No.62 of 1998 under Section 5 of the Limitation Act seeking to condone the delay of 978 days in filing the appeal. The said application was dismissed after an elaborate consideration by the Tribunal holding that there is no sufficient cause shown in the petition for condoning the abnormal delay of 978 days in preferring the appeal. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner states that it is not the case of the respondents that the petitioner had misappropriated the amount, as such the proceedings of the Deputy Registrar calling upon the petitioner to pay the said amount is arbitrary and illegal.

It is the case of the respondents that the petitioner had not properly supervised the accounts being maintained by the paid Secretary of the Society. Therefore, the petitioner is equally liable for the loss caused by the paid Secretary.

Be that as it may, insofar as the delay condonation

petition is concerned, it was argued before the Tribunal below that one G.V.Nagi Reddy, who was the cousin of the petitioner, was entrusted with the matter to file an appeal. Subsequently, the said Nagireddy was murdered and the relevant papers were given to another Advocate, who also later died. Therefore, the delay of 978 days caused in preferring the appeal.

In a case of this nature, it is not the delay that is caused has to be taken into consideration. The merits of the case also can be gone into for the purpose of condoning the delay. I am also in full agreement with the submissions made by the learned counsel for the petitioner that this is not a case where the petitioner-President committed any irregularity or misappropriation of the funds. The only allegation against the petitioner is that there was no proper supervision and timely action was not taken against the paid Secretary in handing over him to the police concerned. Therefore, I am of the opinion that though the delay caused is abnormal, if it is not condoned, it would prejudice the interests of the petitioner.

In the circumstances, the order dated 12-11-1998 passed by the Tribunal in I.A. No. 62 of 1998 in C.T.A.SR.No.237 of 1998 is set aside and the I.A. is ordered accordingly. The Tribunal is directed to number

the appeal and proceed with the matter as per law subject to the condition that the petitioner pays costs of Rs.2,000/- (Rupees Two thousand only) to the A.P. Legal Services Authority, Hyderabad, within a period of four weeks from today.

Subject to the above direction, the writ petition is allowed. No costs.

_____

18-07-2006

MjI/*